

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GARY MCKINLEY,

Case No. 2:12-cv-01090-MMD-RJJ

Petitioner,

ORDER

v.

STATE OF NEVADA and WARDEN
ROBERT LEGRAND,

Respondent.

Petitioner has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (dkt. no. 1). The Court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court will dismiss the State of Nevada and two grounds for relief. The Clerk will serve the petition upon the remaining respondent for a response to the remaining grounds.

Petitioner was convicted in state district court of three counts of sexual assault. He appealed, and the Nevada Supreme Court affirmed. Petitioner then filed a post-conviction habeas corpus petition in state district court. The state district court denied the petition. Petitioner appealed, and the Nevada Supreme Court affirmed.

Petitioner then commenced this action. He has named as respondents the State of Nevada and the warden of the prison where he is held. The State of Nevada is not a proper respondent. The correct respondent is the state officer who has custody of petitioner, namely, the warden. 28 U.S.C. § 2242; Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts. The Court dismisses the State of Nevada from this action.

1 Two grounds state no claim for relief in federal court. In ground 3, petitioner
2 claims that the state post-conviction court erred when it denied discovery and a hearing
3 on two issues: The drug addiction of the victim and the denial of a jury instruction on
4 her addiction. In ground 4, petitioner claims that the state post-conviction court erred
5 when it denied discovery and a hearing on the issue of obtaining an independent
6 psychological evaluation of the victim. "[A] petition alleging errors in the state post-
7 conviction review process is not addressable through habeas corpus proceedings."
8 *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989). The Court dismisses grounds 3
9 and 4.

10 IT IS THEREFORE ORDERED that respondent State of Nevada is DISMISSED
11 from this action.

12 IT IS FURTHER ORDERED that grounds 3 and 4 of the petition (#1) are
13 DISMISSED.

14 IT IS FURTHER ORDERED that the Clerk shall add Catherine Cortez Masto,
15 Attorney General for the State of Nevada, as counsel for respondents.


16 IT IS FURTHER ORDERED that the Clerk shall electronically serve upon
17 respondents a copy of the petition (dkt. no. 1) and this order. In addition, the Clerk shall
18 return to petitioner a copy of the petition.

19 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from
20 the date on which the petition (dkt. no. 1) was served to answer or otherwise respond to
21 the petition (dkt. no. 1). If respondents file and serve an answer, then they shall comply
22 with Rule 5 of the Rules Governing Section 2254 Cases in the United States District
23 Courts, and then petitioner shall have forty-five (45) days from the date on which the
24 answer is served to file a reply.

25 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed
26 with a separate index of exhibits identifying the exhibits by number or letter. The
27 CM/ECF attachments that are filed further shall be identified by the number or numbers
28 (or letter or letters) of the exhibits in the attachment. The hard copy of any additional

1 state court record exhibits shall be forwarded – for this case – to the staff attorneys in
2 Las Vegas.

3
4 DATED THIS 1st day of November 2012.

5 
6 _____
7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28